

February 6, 2003

**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

**Re: Ex Parte: Review of the Unbundling Obligations of Incumbent Local Exchange Carriers--CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996--CC Docket CC No. 96-98; Deployment of Wireline Services Offering Advanced Telecommunications Capability--CC Docket No. 98-167**

Dear Ms. Dortch:

This *ex parte* is in response the January 17, 2003 *ex parte* filed by Verizon regarding the provisioning and availability of T-1 loops as UNEs.<sup>1</sup> While Verizon argues that its provisioning of T-1 loops complies with the Commission's rules and the court decisions interpreting those rules, Mpower submits this is not the case. The policy Verizon has instituted violates the Commission's rules by arbitrarily determining the availability of T-1 loops and canceling Mpower's orders. Indeed, Mpower initiated a complaint regarding this issue with the Commission's Enforcement Bureau on September 10, 2002. The Enforcement Bureau indicated that the issue would be address in this proceeding.

Prior to the implementation of its "new" provisioning policy, Verizon would provide information to Mpower that no facilities existed and then cancel Mpower's orders. Once Verizon became aware of the existence of Mpower's potential customer, Verizon of would then contact the prospective Mpower customer and attempt to sell them a similar data centric product offering. An illustrative example of this recently took place involving a potential Mpower customer in Ontario, California by the name of Zon Son. Zon Son complained to Mpower that Verizon was

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<sup>1</sup> See Letter from Susanne Guyer to William Maher, CC Docket 01-338 *et al.* (Jan. 17, 2003).

aggressively pursuing it for T-1 service only after Mpower's was denied facilities by Verizon, and told that Verizon could not provision the loop. Mpower aggressively escalated this issue within Verizon and was ultimately able to provision this loop for this customer. However, this tactic is all too prevalent with Verizon. From May 2002 through January 2003, Mpower has lost over 100 potential T-1 customers as a result of Verizon's unlawful policy.<sup>2</sup>

As Verizon indicated in its *ex parte*, Verizon has made an "alternative" process available to CLECs. Verizon's alternative is no "alternative" at all, and fails to address the no facilities issue. It is important to note that Verizon continues to state that "no facilities" exist when all that is needed for the loop to be made operational is the placement of a mid-span repeater; every other facility *does exist*. This is the case with the vast majority of Mpower's unfulfilled orders. The Verizon "alternative" does nothing except erect a serious barrier to competition.

When Verizon unilaterally rejects an order because of "no facilities," but then allows a CLEC to place an order for an access service, and then later convert that access service UNEs, Verizon does nothing but drive up, unnecessarily, CLEC costs. As described below, the non-recurring cost for the special access facility is roughly five times as expensive as the UNE rates, and the monthly recurring charges are roughly two and one half times higher than the UNE rate. This calculation does not take into account that the orders placed by the CLEC are placed to an access service ordering center for provisioning. Subsequently, the access service orders and that the conversion orders are required to be sent to a different UNE provisioning center. Unbelievably, Verizon currently has no process in place that links these two centers together. Instead, Verizon assigns an account manager to the process, who in Mpower's case readily admits to not being familiar with the process, adding yet another potential point of failure in an already error-prone process.

At bottom, Verizon's process requires Mpower, as well as other CLECs, to pay five times more for an access services and the associated conversion costs. To the extent that Verizon is allowed to implement this policy, the Commission will clearly signal to the other ILECs that they too, are free to do so. In fact, SBC recently attempted to institute this policy until the Texas commission brokered a settlement requiring SBC to abandon the process, and resume utilizing the provisioning process it had been utilizing T-1 UNE loops the way it has in the past.

Set forth below is a comparison of UNE rates compared to the access rates for Verizon's T-1 loops in California and Florida:

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<sup>2</sup> Attached hereto is an illustrative list of Mpower orders that Mpower was forced to cancel.

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	<b>UNE Rate</b>	<b>Access Rate</b>
<b>Non-recurring Charges - California</b>		
• Service Order	\$31.71	Included in total price
• Central Office Connection	\$3.33	Included in total price
• Outside Facility Connection	\$76.94	Included in total price
Total NRC	\$111.98	\$500.00

<b>Non-recurring Charges - Florida</b>		
• Service Order	\$49.31	Included in total price
• Central Office Connection	\$12.21	Included in total price
• Outside Facility Connection	\$68.30	Included in total price
Total NRC	\$129.82	\$450.00

**Monthly Recurring Charges – California**

• DS-1 Loop	\$97.98	\$250.00
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**Monthly Recurring Charges – Florida**

• DS-1 Loop	\$124.40	\$212.00
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Mpower submits that the Commission must act now to enforce its unbundling rules. To the extent that Verizon is allowed to maintain its current "no facilities" policy, competition for provision of these services will not occur.

Sincerely,

A handwritten signature in black ink, appearing to be "Sarem", written over a horizontal line.

Scott Sarem, Vice President Strategic Relations

cc: Chariman Powell  
Commissioner Martin

Account Number	Vehicle	Year	Make	Model	Color	Comments
1000280850	14-May	17901663	10280850	Midspan Repeater	9/18/2002	
1000281363	8-May	17989297	10281363	Midspan Repeater	9/18/2002	
1000292877	13-May	18174508	Midspan Repeater	9/18/2002		
1000292215	20-May	18151288	Midspan Repeater	9/18/2002		
1000304364	17-Jun	18739215	Midspan Repeater	9/18/2002		
1000306643	3-Jul	18859802	Midspan Repeater	9/18/2002		
1000300850	8-Jul	18830141	Midspan Repeater	9/18/2002		
1000315844	16-Jul	19356339	Midspan Repeater	9/18/2002		
1000324544	13-Aug	19875349	Midspan Repeater	9/18/2002		
1000330223	16-Aug	10198226	Midspan Repeater	9/18/2002		
1000331195	26-Aug	10324789	Midspan Repeater	9/18/2002		
1000334241	27-Aug	10608767	Midspan Repeater	9/18/2002		
1000335124	29-Aug	10775509	Midspan Repeater	9/18/2002		
1000332124	3-Sep	10384805	Midspan Repeater	9/19/2002		
1000335330	10-Sep	10668330	Midspan Repeater	9/19/2002		
1000335517	10-Sep	10700049	Midspan Repeater	9/19/2002		
1000334755	16-Sep	10681890	Midspan Repeater	9/19/2002		
1000336979	16-Sep	10883202	Midspan Repeater	9/19/2002		
1000327661	19-Sep	10070704	Midspan Repeater	9/23/2002		
1000339088	24-Sep	11050773	Midspan Repeater	9/30/2002		
1000341120	23-Sep	11269475	Midspan Repeater	11/4/2002		
1000335909	25-Sep	10855142	Midspan Repeater	10/22/2002		
1000334954	25-Sep	10697577	Midspan Repeater	11/22/2002		
1000344171	30-Sep	11466356	Midspan Repeater	10/17/2002		
1000344171	30-Oct	11466720	Midspan Repeater	10/17/2002		
1000345378	30-Sep	11522403	Midspan Repeater	11/27/2002		
1000334024	9-Oct	10533156	Midspan Repeater	11/6/2002		
1000346187	4-Oct	11654234	Midspan Repeater	10/10/2002		
1000342494	14-Oct	11338052	Midspan Repeater	10/29/2002		
1000339480	14-Oct	11088832	No Network facilities	11/18/2002		
1000352331	18-Oct	11982706	Midspan Repeater	11/27/2002		
1000345947	22-Oct	11570858	Midspan Repeater	10/31/2002		
1000350567	29-Oct	11626385	Midspan Repeater	11/27/2002		
1000349558	29-Oct	11798118	Midspan Repeater	11/27/2002		
1000294531	11-Oct	10678353	Aerial Cable	11/6/2002		
1000343793	1-Nov	11565467	Midspan Repeater	11/27/2002		
1000357713	11-Nov	12380141	Midspan Repeater	12/12/2002		
1000356382	8-Nov	12288874	Midspan Repeater			
1000352022	2-Dec	12013707	Midspan Repeater	11/27/2002		
1000352659	2-Dec	12016841	Midspan Repeater	11/27/2002		
1000352236	7-Nov	12002263	Midspan Repeater	11/27/2002		
1000353273	12-Nov	12102807	Midspan Repeater	11/27/2002		
1000354078	7-Nov	12119121	Midspan Repeater	11/27/2002		
1000357046	15-Nov	12316201	Midspan Repeater	12/20/2002		
1000355641	22-Nov	12244345	Midspan Repeater	12/20/2002		
1000364131	26-Nov	12948251	Midspan Repeater	12/20/2002		
1000362322	26-Nov	12767150	Midspan Repeater	12/26/2003		
1000359763	20-Nov	12637547	Midspan Repeater	12/22/2002		
1000357580	19-Nov	12341350	Midspan Repeater	11/25/2002		
1000355911	12-Nov	12302820	Midspan Repeater	12/12/2002		
1000366323	3-Dec	13048045	Midspan Repeater	12/12/2002		
1000353503	3-Dec	12391183	Midspan Repeater	12/11/2002		
1000362326	5-Dec	12752448	Midspan Repeater	12/11/2002		
1000357928	5-Dec	12392540	Midspan Repeater	12/12/2002		
1000365532	9-Dec	13075078	Midspan Repeater	12/10/2002		
1000361835	25-Nov	12716609	Midspan Repeater	12/16/2002		
1000361084	10-Dec	12610779	Midspan Repeater	12/20/2002		
1000359760	11-Dec	12603378	No Network facilities	12/20/2002		
4000109039	1/2/2003	11631008	Midspan Repeater			
1000369189	1/20/2003	13369102	Midspan Repeater			
1000372545	1/3/2003	13464550	Midspan Repeater			
1000375719	1/20/2003	13732665	Midspan Repeater			